REMARKS

The undersigned notes that a new Examiner has been assigned to this application and that this rejection represents a third non-final Office Action, which is contrary to the concept of compact prosecution. The undersigned also notes that the new rejections are all based upon the Kleiman reference of record. The new rejection states in relevant part that Kleiman contains "a playback credit bank 212 stored in the player; and a method of playing content for consumption by a user, providing the credit bank has ample playback credit, and deducting credit when content is played."

With all due respect, the undersigned notes that the Office Action Response mailed on January 16, 2003 establishes beyond any doubt that Kleiman does not in fact have a playback credit bank within the meaning of Applicant's claims. Moreover, this prior Response further establishes beyond any doubt that Kleiman does not deduct a playback credit when content is played. (Kleiman re-encrypts content if enough credits are present. The undersigned refers the Examiner to the second paragraph of page 2 through the first paragraph of page 4 of the prior Response for details.)

It is further noted that all of the rejections from the prior Office Action have been abandoned in favor of new rejections, evidencing that the explanation of the operation of Kleiman provided in this prior Response was persuasive. The Examiner in fact states that this is the case in section 4 or the Office Action. Yet the current Office Action apparently continues to make the erroneous assertion that Kleinman does have a playback credit bank and that a playback credit is deducted when content is played. On the basis of the same arguments presented in the prior Response alone (reiterated here by reference thereto), all of the claim rejections of the current Office Action clearly fail to establish prima facie obviousness for failure to properly consider each and every claim limitation. Accordingly, allowance is warranted and requested at an early date.

While further arguments are unnecessary in view of the clear deficiency of Kleiman, it is believed appropriate to comment on the combination proposed by the Examiner of Kleiman modified by Liu. Assuming arguendo that Kleiman and Liu are combined as suggested by the Office Action, the undersigned is unable to resolve what the resulting

structure would be, why one would make the combination and how it would function. Consider the following:

1. In Kleiman, as described in the prior Response and generally described in column 13 of Kleiman, the VET envelope is decrypted at the player using a VET key. The VET is encrypted using a hardware dependent key (the internal IT key). The re-encryption action triggers deducting a credit in Kleiman. In Kleiman, the hardware specific key is used to internally encrypt and decrypt the content (the VET) so that playback is only possible on a single device. Apparently, multiple playbacks are contemplated for a single credit.

2. In Liu, referring to the text cited by the Examiner, a key is provided to a user after authentication. That key can be a one time use key, or that the key may be good for a certain number of plays or for a certain time period. Such a key is used to decrypt the data for one song (see col. 5, lines 44-49).

Thus, while Kleiman uses hardware specific encryption to protect the content, Liu uses a downloaded key that can presumably be associated with an allowable number of plays. How then shall the two references be combined and what suggestion is there to combine them in this way? If Lui's encryption keys are used, it would appear that the advantage and function of Kleiman's hardware specific enryption is destroyed. If the Examiner is proposing that both encryption schemes should be used simultaneously, where is the suggestion for such redundancy, since Kleiman already has a secure encryption system?

Thus, it must be concluded that either the function of Kleiman's hardware specific encryption is destroyed by the combination, or the combination produces redundant encryption for which there is no apparent need and thus no motivation in the art to provide.

One cannot establish prima facie obviousness if a proposed combination or modification destroys the function of one of the references being combined. Accordingly, the current combination cannot be used to establish prima facie obviousness since the function of Kleiman's hardware specific encryption would be destroyed.

Moreover, in order to establish prima facie obviousness, there must be some motivation present in the art that would suggest to one of ordinary skill to make the proposed modification. The undersigned finds no such suggestion in the art for providing

a redundant encryption system. Accordingly, reconsideration and allowance is requested at an early date.

The undersigned notes that many other distinctions exist between the cited reference and the invention as claimed. Moreover, the deficiencies in Kleiman and its combination withLui render any discussion of Abecassis moot. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position in any unaddressed position.

In view of this communication, all claims are believed to be clearly in condition for allowance and such is respectfully requested at an early date. If the Examiner feels that further issues remain, a telephone call to the undersigned is respectfully requested since this is now a third non-final Office Action and this case should be brought to conclusion as soon as possible.

Respectfully submitted,

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